

1  
2  
3  
4  
5  
6  
7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

9 JUDY L. GARTON,

10 Plaintiff,

11 v.

12 MICHAEL J. ASTRUE, Commissioner of  
13 Social Security,

14 Defendant.

Case No. 08-5635RJB

ORDER ADOPTING REPORT  
AND RECOMMENDATION

15 This matter comes before the Court on the Report and Recommendation of Magistrate  
16 Judge J. Richard Creatura (Dkt. 13). The Court has reviewed the Report and Recommendation,  
17 the Defendant's Objections to the Report and Recommendation, the Plaintiff's Response to  
18 Objections, and the remainder of the file herein.

19 **I. FACTUAL AND PROCEDURAL BACKGROUND**

20 The Magistrate Judge recommends that the Court remand this matter to the  
21 administration for further consideration because the Administrative Law Judge's ("ALJ")  
22 findings are not properly supported by substantial evidence. Dkt. 13 at 3. The ALJ found that  
23 Dr. Cove's and Dr. Siler's (hereafter "treating physicians") opinions were not supported by  
24 objective medical findings, that the treating physicians offered little explanation for their  
25 opinions, that they relied on subjective reports by claimant, and that their opinions were not  
26 consistent with other medical opinions of record. The Magistrate Judge concludes that "[a]  
27 review of the medical evidence does not support the ALJ's reasons for rejecting the opinion of  
28

1 Dr. Cove.” Dkt. 13 at 6.

2 The Commissioner objects to the Report and Recommendation, stating that the ALJ  
3 provided multiple and legitimate reasons for rejecting Dr. Cove’s opinion regarding the extent of  
4 Plaintiff’s limitations. Dkt. 14 at 1-2. The Commissioner argues that the treatment provided by  
5 Dr. Cove is not objective evidence of a limitation to sedentary work. The Commissioner also  
6 states that Dr. Cove’s assessment of limitation was rejected by the ALJ because Dr. Cove  
7 provided little explanation for Plaintiff’s limitations. Dkt. 14 at 3. Finally, the Commissioner  
8 states that the ALJ rejected Dr. Cove’s limitation assessment because “he appeared to base his  
9 opinion on Plaintiff’s subjective reports of symptoms and limitations.” Dkt. 14 at 4.

10 Plaintiff responds to the Commissioner’s objections by stating that the ALJ’s assertion  
11 that Dr. Cove’s opinions are not supported by objective findings is itself not supported by  
12 substantial evidence, that Dr. Cove’s chart notes contain extensive objective findings which  
13 explain his assessment of limitation to sedentary work, and that there is no evidence in the record  
14 to justify the ALJ’s conclusion that Dr. Cove relied exclusively upon Plaintiff’s subjective  
15 complaints in forming their opinions. Dkt. 15.

## 16 II. DISCUSSION

17 The ALJ’s decision denying the disability insurance benefits will be disturbed only if that  
18 decision is not supported by substantial evidence or it is based upon legal error. *Tidwell v. Apfel*,  
19 161 F.3d 599, 600 (9th Cir. 1998). Substantial evidence is “more than a mere scintilla. It means  
20 such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”  
21 *Richardson v. Perales*, 4022 U.S. 389, 401, 91 S.Ct. 1420, 28 L.Ed.2d 842 (1971); *Tidwell v.*  
22 *Apfel*, 161 F.3d at 600.

23 The ALJ is responsible for determining credibility, resolving conflicts in medical  
24 testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d  
25 1035, 1039 (9th Cir. 1995). Where the evidence is susceptible to more than one rational  
26 interpretation, it is the ALJ’s decision that must be upheld. *Id.*

27 As a general rule, more weight should be given to the opinion of a treating source than to  
28 the opinion of doctors who do not treat the claimant. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.

1 1995). Where the treating doctor's opinion is not contradicted by another doctor, it may be  
2 rejected only for "clear and convincing" reasons. *Id.* Additionally, "clear and convincing"  
3 reasons are required to reject the treating doctor's ultimate conclusions. *Id.* Even if the treating  
4 doctor's opinion is contradicted by another doctor, the Commissioner may not reject this opinion  
5 without providing "specific and legitimate reasons" supported by substantial evidence in the  
6 record. *Id.* However, the ALJ need not accept a treating physician's opinion which is brief and  
7 conclusory in form with little in the way of clinical findings to support its conclusion.  
8 *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989).

9 In this case, the reasons given by the ALJ for rejecting the treating physicians' opinions  
10 are not supported by substantial evidence. The ALJ stated that there is no objective evidence of  
11 a limitation to sedentary work. However, upon review of the record, the Court is persuaded that  
12 the treatment record, the MRI study, and the EMG are sources of objective evidence. The ALJ  
13 also stated that the treating physicians' assessments of limitation were rejected because they  
14 provided little explanation for Plaintiff's limitations. Again, upon review of the record, the  
15 ALJ's conclusion is not supported by the record. The treating physicians' notes are extensive  
16 and support their conclusions. The ALJ next stated that the treating physicians' limitation  
17 assessment was rejected because "it appears that they may have relied... on the claimant's  
18 subjective report of symptoms and limitations." The ALJ, however, did not support this  
19 conclusion with any evidence in the record. Since the ALJ's reasons are not supported by  
20 substantial evidence, the ALJ should not have discounted the treating physicians' opinions even  
21 though they may have not been consistent with the non-treating physicians' opinions. For the  
22 foregoing reasons, the Court should adopt the Magistrate Judge's Report and Recommendation.

### 23 III. ORDER

24 The Court, having reviewed the Report and Recommendation and the remaining record,  
25 does hereby find and ORDER:

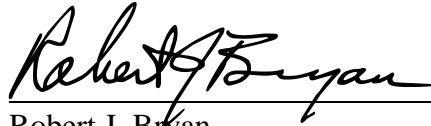
26 (1) The Court **ADOPTS** the Report and Recommendation (Dkt. 13);

27 (2) The matter is **REMANDED** to the administration for further consideration; and

28 ///

1 (3) The Clerk is directed to send copies of this Order to counsel of record.

2 DATED this 16<sup>th</sup> day of July, 2009.

3 

4 Robert J. Bryan  
5 United States District Judge  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28